



STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

STATE OF NEW YORK

DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A
STATE CAMPUS
ALBANY, N. Y. 12227

AREA CODE 518
457-2655, 5, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, New York
March 5, 1973

Aleks and Salme Kurgvel
3602 16th Street, N.W.
Washington, D.C. 20010

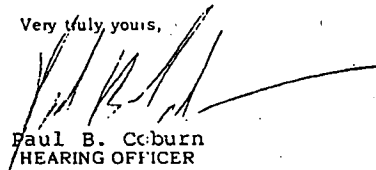
Dear Mr. and Mrs. Kurgvel:

Please take notice of the DECISION of
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to section 690 of
the Tax Law any proceeding in court to review an adverse decision
must be commenced within 4 months after
the date of this notice.

Any inquiries concerning the computation of tax due or refund allowed
in accordance with this decision or concerning any other matter relat-
ing hereto may be addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,


Paul B. Coburn
HEARING OFFICER

cc Petitioner's Representative
Law Bureau

DECLASSIFIED AND RELEASED BY
CENTRAL INTELLIGENCE AGENCY
SOURCE/METHOD/EXEMPTION 3B2B
NAZI WAR CRIMES DISCLOSURE ACT
DATE 2006

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of :

ALEKS KURGVEL and SALME KURGVEL :

DECISION

for Redetermination of Deficiency or for :
Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Years :
1962, 1963, 1964 and 1965. :

Petitioners, Aleks Kurgvel and Salme Kurgvel, have filed a petition for redetermination of deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1962, 1963, 1964 and 1965. (File Nos. 29159912 and 49203623). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on December 14, 1972, at 10:15 A.M. Petitioners appeared pro se. The Income Tax Bureau appeared by Saul Heckelman, Esq., (Francis X. Boylan, Esq., of Counsel).

ISSUES

I. Was petitioner, Aleks Kurgvel, a resident individual of New York State during the years 1962, 1963, 1964 and 1965?

II. Was petitioner, Aleks Kurgvel, entitled to a credit against New York State personal income taxes due for the years 1962, 1963, 1964 and 1965, for personal income taxes paid to the District of Columbia?

FINDINGS OF FACT

1. Petitioners, Aleks Kurgvel and Salme Kurgvel, filed New York State combined income tax returns for the years 1962 and 1965. They filed New York State income tax resident returns for the years 1963 and 1964. On their returns for the years 1962, 1963 and 1964, they subtracted from total income, the salary income earned by petitioner, Aleks Kurgvel, during said years. On their 1965 return, they included his salary income in total New York income but claimed a resident tax credit in the sum of \$188.22 for income tax paid to the District of Columbia for said year.

2. On March 28, 1966, petitioner, Aleks Kurgvel, filed claims for resident tax credits for income taxes paid to the District of Columbia in the sum of \$152.53 for the year 1962, \$169.06 for the year 1963 and \$243.77 for the year 1964.

3. On March 28, 1966, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Aleks Kurgvel and Salme Kurgvel, imposing additional personal income tax for the years 1962, 1963 and 1964 in the sum of \$249.80, upon the grounds that they were New York State residents during said years and that all of their income during said years was taxable whether earned within or without New York State. It allowed a credit for personal income tax paid to the District of Columbia for said years. Petitioners paid the sum of \$249.80 to the Income Tax Bureau on April 1, 1966.

4. On November 14, 1966, the Income Tax Bureau issued a supplemental Statement of Audit Changes against petitioners, Aleks Kurgvel and Salme Kurgvel, disallowing credits claimed for personal income

tax paid to the District of Columbia for the years 1962, 1963 and 1964, in the total sum of \$565.36, which credits had been previously allowed in the Statement of Audit Changes, dated March 28, 1966, upon the grounds that New York residents are not permitted a tax credit for taxes paid to the District of Columbia since it allows a credit for income taxes paid to New York State by a New York resident. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$647.47.

5. On December 19, 1966, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Aleks Kurgvel, disallowing a credit claimed for personal income tax paid to the District of Columbia for the year 1965 in the sum of \$188.22 and accordingly issued a Notice of Deficiency in the sum of \$195.87.

6. Petitioner, Aleks Kurgvel, was born in Estonia. He married his wife, petitioner, Salme Kurgvel, in Estonia in 1928. He was employed by the United States Army in Europe prior to 1953. In 1953 he obtained civilian employment in Washington, D.C. as a linguist and research analyst with the United States Army. He has held that position until the present time. He has become a United States citizen.

*Same
1966 transfer
D. K. Kurgvel
to Wash. D.C.*

7. Petitioner, Salme Kurgvel, and her two children emigrated to the United States prior to 1953. Petitioner ^{S.K. 1. Oct. '52} leased an apartment in Long Island City, New York until 1963. In 1963, they purchased, [?] as tenants by the entirety, a two family home in Elmhurst, New York. Petitioner, Salme Kurgvel, has worked for First National City Bank

in W.D.C.
people
have the
choice of
1/2 bath
many
people
of 1 bath
no longer
no longer

8. Petitioner, Aleks Kurgvel, lived in a furnished room with kitchen privileges and without a private bath in Washington, D.C. during the years 1962, 1963, 1964 and 1965. He has been a member of the Estonian Society of Washington, D.C. since 1961. He participated in the affairs of two Estonian churches in the Washington, D.C. area. He served on a Washington, D.C. jury in 1962.

9. Petitioner, Aleks Kurgvel, voted in New York State in 1960.

10. Petitioner, Aleks Kurgvel, held a New York State driver's license during the years 1962, 1963, 1964 and 1965.

11. Petitioner, Aleks Kurgvel, executed a will in Washington, D.C. in 1964.

12. Petitioner, Aleks Kurgvel, spent as many weekends as he possibly could at his ^(house, to repair it, to take care of it) home in New York City during the years 1962, 1963, 1964 and 1965. He failed to submit any documentary or other ^{last home} substantial evidence to prove that he spent less than 30 days in New York State during each of said years.

13. Petitioner, Aleks Kurgvel, personal income tax due to New York State exceeded the amount of his personal income tax due to the District of Columbia during each of the years 1962, 1963, 1964 and 1965, before any allowances for credits for income taxes paid to other jurisdictions.

CONCLUSIONS OF LAW

A. That petitioner, Aleks Kurgvel, was domiciled in New York State, during the years 1962, 1963, 1964 and 1965, spent more than 30 days within New York State during each of said years and maintained

a permanent abode in New York State during each of said

years and, therefore, he was subject to New York State personal income tax as a resident individual during said years, even though his income was earned while working in the District of Columbia, in accordance with the meaning and intent of section 605(a)(1) of the Tax Law and 20 NYCRR 102.2.

B. That petitioner, Aleks Kurgvel, was a resident of the District of Columbia during the years 1962, 1963, 1964 and 1965, since he maintained a place of abode in the District of Columbia for more than seven months during each of said years in accordance with the meaning and intent of section 47-1551c, D.C. Code. He, however, was entitled to a credit against personal income taxes payable as a resident to the District of Columbia for said years equal to the amount of personal income taxes payable to New York State since he was a domiciliary of New York State during said years in accordance with the meaning and intent of section 47-1567(d), D.C. Code. That since the amount of personal income tax due to New York State exceeded the amount of personal income tax due to the District of Columbia during each of said years, petitioner, after application of the credit allowed by section 47-1567(d), D.C. Code, did not owe any personal income tax to the District of Columbia. Since he did not owe any personal income tax for said years to the District of Columbia, he was not entitled to any credits against his New York State personal income tax for said years in accordance with the meaning and intent of section 620(a) of the Tax Law.

C. That the petition of Aleks Kurgvel and Salme Kurgvel is denied and the notices of deficiency issued November 14, 1966 and December 19, 1966, are sustained.

DATED: Albany, New York
March 5, 1973

STATE TAX COMMISSION

James M. Sullivan
COMMISSIONER

Charles M. Healy
COMMISSIONER

Walter E. Krenn
COMMISSIONER